

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 07-0111
Indiana Individual Income Tax
For 2002 through 2005

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Imposition of the State's Adjusted Gross Income On Wages.

Authority: Ind. Const. art. X, § 8; IC § 6-3-1-1 et seq.; IC § 6-3-1-3.5(a); IC § 6-3-1-8; IC § 6-8.1-5-1; *Merchant's Loan & Trust Co. v. Smietanka*, 255 U.S. 509 (1921); *Wilcox v. Commissioner*, 848 F.2d 1007 (9th Cir. 1988); *United States v. Romero*, 640 F.2d 1014 (9th Cir. 1981); *Coleman v. Commissioner*, 791 F.2d 68 (7th Cir. 1986); *United States v. Koliboski*, 732 F.2d 1328 (7th Cir. 1984); *United States v. Connor*, 898 F.2d 942 (3rd Cir. 1990); *Snyder v. Indiana Dept. of State Revenue*, 723 N.E.2d 487 (Ind. Tax Ct. 2000); *Thomas v. Indiana Dept. of State Revenue*, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); *Richey v. Indiana Dept. of State Revenue*, 634 N.E.2d 1375 (Ind. Tax Ct. 1994); I.R.C. § 61(a); I.R.C. § 62; I.R.C. § 3401(c).

Taxpayer argues that the money he received from his employer did not constitute "income" subject to Indiana adjusted gross income tax.

II. First Amendment Protection.

Authority: U.S. Const. amend. I; IC § 6-8.1-5-1(b).

Taxpayer argues that imposition of Indiana adjusted gross income tax violated his U.S. Constitution First Amendment Rights.

III. Fourth Amendment Protection.

Authority: U.S. Const. amend. IV; IC § 6-8.1-5-1(b).

Taxpayer argues that imposition of Indiana adjusted gross income tax violated his U.S. Constitution Fourth Amendment Rights.

IV. Fifth Amendment Protection.

Authority: U.S. Const. amend. V; *United States v. Sullivan*, 274 U.S. 259 (1927); *United States v. Daly*, 481 F.2d 28 (8th Cir. 1973); IC § 6-8.1-5-1(b).

Taxpayer argues that imposition of Indiana adjusted gross income tax violated his U.S. Constitution Fifth Amendment Rights.

STATEMENT OF FACTS

The Department of Revenue (Department) sent taxpayer notices of “Proposed Assessment” stating that taxpayer owed Indiana income tax. Taxpayer disagreed with the assessments and submitted a protest to that effect. The protest was assigned to a hearing officer, an administrative hearing was conducted by telephone, taxpayer explained the basis for his protest, and this Letter of Findings results.

I. Imposition of the State’s Adjusted Gross Income On Wages.

DISCUSSION

Taxpayer maintains that the proposed assessments are based on his “wages” and that the money he received during 2002 through 2005 was not subject to individual income tax.

Taxpayer cites to *Merchant’s Loan & Trust Co. v. Smietanka*, 255 U.S. 509 (1921), in support of his argument. In *Smietanka*, the Court stated that, “There can be no doubt that the word [income] must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the Act of 1913.” *Id.* at 519. The Court stated, “there would seem to be no room to doubt that the word must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act and that what that meaning is has now become definitely settled by decisions of this court.” *Id.* Taxpayer reads *Smietanka* as supporting the proposition that the federal income tax – and by extension Indiana’s adjusted gross income tax – can only be levied against corporate gain.

In *Smietanka* – resolving the issue of whether a provision in a will, stipulating that accretions in the value of testamentary property should be considered additions to principal and not income – the court noted that the definition of “income” remained unchanged. The Court went on to state that, “In general, income is the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets. . .” *Smietanka* at 519. Taxpayer’s conclusion results from a tortured reading of the case.

Under authority of Ind. Const. art. X, § 8, the General Assembly enacted the Adjusted Gross Income Tax of 1963 (Act). IC § 6-3-1-1 et seq. The Act defines “adjusted gross income” in the case of individuals, as the term is defined in I.R.C. § 62 with certain modifications specific to Indiana. IC § 6-3-1-3.5(a). Thus “adjusted gross income” is, “in the case of an individual, gross income minus . . . [certain] deductions.” I.R.C. § 62. Similarly, the Act incorporates the definition of “gross income” as found in I.R.C. § 61(a). IC § 6-3-1-8. Therefore, “gross income” consists of “*all income from whatever source derived . . .*” I.R.C. § 61(a) (*Emphasis added*).

Taxpayer's contention – that wages paid by a private, non-governmental organization are exempt from income tax – does not survive scrutiny. The Internal Revenue Code's definition of "gross income" as "income from whatever source derived . . ." is as clear and unambiguous a statement as anything likely to be found in either the Internal Revenue Code or the Indiana tax provisions. Both federal and state courts have consistently, repeatedly, and without exception determined that individual wages – whether received from the government, the District of Columbia, corporations, or private entities – constitute income subject to taxation. *United States v. Connor*, 898 F.2d 942, 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); *Wilcox v. Commissioner*, 848 F.2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); *Coleman v. Commissioner*, 791 F.2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); *United States v. Koliboski*, 732 F.2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable.") (Emphasis in original); *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable. . . . [Taxpayers] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves.").

In addressing the identical question, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United States Supreme Court and federal circuit courts, and this Court's opinion . . . all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." *Snyder v. Indiana Dept. of State Revenue*, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). See also *Thomas v. Indiana Dept. of State Revenue*, 675 N.E.2d 362 (Ind. Tax Ct. 1997); *Richey v. Indiana Dept. of State Revenue*, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer's belief – that he is not subject to Indiana's adjusted gross income tax because he works for and is compensated by a private, non-governmental entity – is erroneous.

FINDING

Taxpayer's protest is denied.

II. First Amendment Protection.

DISCUSSION

Taxpayer argues that the Department's "Proposed Assessments" violate his First Amendments rights. U.S. Const. amend. I. provides as follows;

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of

the people peaceably to assemble, and to petition the Government for a redress of grievances.

Taxpayer has not explained how the requirement that he pay his share of Indiana income tax in any way affects or touches on his right to assemble or to petition the government. The taxpayer has not explained how the requirement that he pay his share of Indiana income tax limits his freedom of speech or his right to exercise his religion.

Taxpayer has failed to meet the burden of proof necessary to overcome the presumption of correctness attached the proposed assessments pursuant to IC § 6-8.1-5-1(b). “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” *Id.*

FINDING

Taxpayer’s protest is denied.

III. Fourth Amendment Protection.

DISCUSSION

Taxpayer argues that the proposed assessments violate his Fourth Amendment protections. U.S. Const. amend. IV states that;

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Again, taxpayer has done nothing more than suggest that a pious recitation of “Fourth Amendment” is sufficient to avoid paying the proposed assessments. There is nothing to suggest that the proposed assessments derive from an “unreasonable search” or that the proposed assessments results from a warrantless search of his person or place.

Taxpayer has failed to rebut the 6-8.1-5-1(b) presumption that the proposed assessments were correct.

FINDING

Taxpayer’s protest is denied.

IV. Fifth Amendment Protection.

DISCUSSION

Taxpayer argues that the proposed assessments violate his Fifth Amendment protections. U.S. Const. amend. V states that;

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval services, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

Taxpayer has offered no discernable argument supporting his reliance on the Fifth Amendment. Presumably, taxpayer argues that the proposed assessments were levied “without due process of law” or that filing an Indiana tax return would constitute self-incrimination. The Supreme Court responded to this argument in *United States v. Sullivan*, 274 U.S. 259 (1927).

It would be an extreme if not an extravagant application of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime. But if the defendant desired to test that or any other point he should have tested it in the return so that it could be passed upon. He could not draw a conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law. *Id.* at 264-264.

There is no constitutional right to refuse to file an income tax return on the ground that it violates the Fifth Amendment privilege against self-incrimination. *See also United States v. Daly*, 481 F.2d 28, 30 (8th Cir. 1973) rejecting taxpayer’s “blanket refusal to answer any questions on the returns relating to his income or expenses for the years in question.”

Defendant has made no reasonable showing demonstrating that the disclosure of the wages or income received during the years in question could possibly incriminate him or that the proposed assessments were imposed without due process of law.

Taxpayer has predicated his protest on constitutional protections set out in the Bill of Rights. The Bill of Rights plays a central role in American law and government, remains a fundamental symbol of the freedoms and culture of this nation, and represents essential principles for which our fellow citizens have struggled, fought, and died. Taxpayer’s reliance on these rights to avoid paying a tax bill is shabby and demeaning.

FINDING

Taxpayer’s protest is denied.

DK/JR/BLK – May 1, 2007.